

IP-1-CN-94-004 ORDER ACCEPTING FILING, DELEGATING PREPARATION OF ENVIRONMENTAL REPORT, AND AUTHORIZING EXECUTIVE SECRETARY TO VARY TIME REQUIREMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application by LSP-
Cottage Grove, L.P. for a Certificate of Need
for a Large Generating Facility

ISSUE DATE: April 20, 1994

DOCKET NO. IP-1-CN-94-004

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PROCEDURAL HISTORY

On February 22, 1994 LSP-Cottage Grove, L.P. (LSP or the Company) an affiliate of LS Power Corporation, filed an application for a certificate of need to build a natural gas fired 232-megawatt cogeneration plant in Cottage Grove. The plant is intended to supply energy to Northern States Power Company and is scheduled to come on line in the summer of 1997.

On March 7, 1994 the Department of Public Service (the Department) filed comments stating the application failed to include specified information required under the certificate of need rules, Minn. Rules, parts 7849.0010 through 7849.0400. The Department recommended finding the filing incomplete.

After discussing the Department's comments with Department and Commission staff, LSP proposed, as an alternative to finding the filing incomplete, extending the 30-day period for determining completeness. On March 23, 1994 the Commission issued an Order extending the 30-day deadline for determining whether or not the filing was substantially complete.¹

On March 29, 1994 the Company made a supplementary filing. The application as supplemented came before the Commission on April 14, 1994.

The Company, the Department, and Northern States Power Company (NSP) appeared. NSP had supplied much of the information in the supplementary filing and appeared for purposes of answering questions. In oral comments the Department stated it considered the supplemented application substantially complete.

FINDINGS AND CONCLUSIONS

¹ Minn. Rules, part 7849.0200. subp. 5.

I. Filing Accepted

Having examined the filing and having considered the comments of the Department, the Commission finds that the filing as supplemented is substantially complete. This is a finding as to form only; it implies no judgment on the merits of the application.

The Commission will accept the filing as of March 29, 1994, the date of the supplementary filing.

II. Environmental Report Responsibility Delegated

The Environmental Quality Board (EQB) is responsible for environmental and siting review of the Company's proposal. EQB regulations require preparation of an environmental report for inclusion in the certificate of need hearing record. Minn. Rules, part 4410.7100. This report ensures early attention to environmental concerns and helps lay the groundwork for the comprehensive environmental review which will take place during the siting process.

The Commission is to consider the environmental report, and parties' comments on it, in making its final determination. The Commission is also to prepare the report.²

The structure of this Commission does not allow it to both prepare the report and evaluate the report as a disinterested decisionmaker. Many state utility commissions are structured to combine these functions, with advocacy and advisory staffs working under the same organizational umbrella. In Minnesota, however, the Legislature has separated the advocacy and decisionmaking functions into separate agencies, the Commission and the Department. The Commission therefore lacks the staffing levels necessary to prepare and present evidence in its own proceedings. Neither does it have in place the formal procedures necessary to ensure the mutual independence of staff performing advisory and advocacy functions.

To resolve this quandary, the Department has agreed to assume responsibility for the environmental report. The Commission believes this accurately reflects the statutory roles of the two agencies and will officially delegate that responsibility to the Department.

² Minn. Rules, part 4410.7100, subp. 1.

III. Executive Secretary Authorized to Vary Time Lines

Under Minn. Stat. § 216B.243, subd. 5 (1992), the Commission is required to act on the Company's application within six months of a substantially complete filing. Meeting the six-month deadline in a case this complex places all parties under severe time constraints.

It is likely that standard comment periods and filing deadlines will have to be accelerated. To streamline this process the Commission will authorize the Executive Secretary to vary the time requirements of its rules when necessary. Any party adversely affected by such a variance may bring the matter before the Commission.

ORDER

1. LSP-Cottage Grove, L.P.'s certificate of need application is accepted as substantially complete as of March 29, 1994, the date of the Company's supplementary filing.
2. The Commission delegates its responsibilities for preparation, distribution, and sponsorship of the environmental report required under Minn. Rules, part 4410.7100 to the Department of Public Service.
3. The Commission authorizes the Executive Secretary to enter Orders on behalf of the Commission varying time requirements for the filing of pleadings and other documents and determining the conduct of this proceeding, under the standards set forth in Minn. Rules, part 7830.4400. Any party aggrieved by such an Order shall file a motion for reconsideration no later than the earlier of the following: ten days from the date of the Order or one day before any deadline or the occurrence of any act specified in the Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)